

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

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DOCKET #
U.S. DISTRICT COURT
WEST DIST. OF WISCONSIN
JUL 22 2002
FILED
JOSEPH W. SKUPNIEWITZ CLERK
CASE #

**NEIL GAIMAN, and
MARVELS AND MIRACLES, LLC,**

Plaintiffs,

v.

Case No.: 02-C-0048-S

**TODD MCFARLANE, and
TODD MCFARLANE PRODUCTIONS, INC.,
TMP INTERNATIONAL, INC.,
MCFARLANE WORLDWIDE, INC., and
IMAGE COMICS, INC.,**

Defendants.

THIRD DECLARATION OF NEIL GAIMAN

I, Neil Gaiman, make this declaration under penalties of perjury:

1. I am one of the plaintiffs in the present lawsuit and I make this declaration upon my personal knowledge.
2. In 1992, Todd McFarlane contacted me to see if I would be interested in authoring an issue of the *Spawn* comic book series. At that time, McFarlane told me he was also attempting to recruit three other comic book authors – Dave Sim, Frank Miller, and Alan Moore – to write issues of *Spawn* as well. Frank Miller and Alan Moore were at that time, and continue to be, three of the most respected authors in the comic book industry. Dave Sim is a comic artist and writer who was seen as a leader in the creators' rights and creator ownership movement.
3. McFarlane emphasized to me that he and his company were very interested in comic book creator's rights and that I would not be signing anything away if I

wrote an issue for him. Based on those representations, I agreed to write a script for what eventually became *Spawn* Issue 9.

4. *Spawn* Issue 9 was very successful. As a result, McFarlane and I agreed that I would write a three issue mini-series featuring the *Angela* character I had created in *Spawn* 9. To help promote the *Angela* series, I wrote a portion of the script for *Spawn* Issue 26 which included references to my *Angela* character. McFarlane included my partial script in *Spawn* Issue 26. I then authored the entire text of each issue of the *Angela* series.

5. Apparently, in 1995, McFarlane began filing applications for copyright registrations in *Spawn* Issue 26 and the *Angela* series. McFarlane also filed an application for *Spawn* Issue 9 in 1996. McFarlane did not tell me he was filing those applications and I did not find out about them until sometime after I received a letter from McFarlane in February 1999 in which he stated that he was rescinding all previous agreements between us.

6. Although defendants claim to have mailed a copy of the *Angela* trade paperback to my Minnesota address in November of 1995, I was working in Great Britain for much of the Fall of 1995 and 1996 and do not remember receiving a copy of that publication at that time. I also do not recall ever receiving from defendants copies of the *Spawn* Volume 2, *Spawn* Volume 6, *Pathway to Judgement*, and *Angela's Hunt* trade paperbacks. Even if I had received copies of those publications, it is unlikely I would have examined them because of the sheer number of publications I have in print and because they were simply reprints of previously published material. I have in excess of 200 comic books, trade paperbacks, and novels in publication, which continue to be reprinted and republished across the world. As a working author, this makes it extremely difficult and often infeasible to keep track of when any individual work is republished unless it is specifically called to my attention.

7. While I am often asked to sign copies of trade paperbacks at comic book conventions and book signings, the hectic environment of those events, with hundreds of people to sign for in a limited period of time, makes it impossible to stop and examine each item I am asked to sign. It was not until after I received Mr. McFarlane's rescission letter in February 1999 that I began to refuse to sign trade paperbacks for which I was not receiving royalties.

I DECLARE, SUBJECT TO THE UNITED STATES LAWS GOVERNING PERJURY, THAT THE FOREGOING IS TRUE AND CORRECT.

Dated:

22 July 2002

Signed:


Neil Gaiman